

General Information Letter: Overpayment shown on a return filed more than 3 years after the extended due date may not be credited against estimated tax liability of the subsequent year.

August 20, 2002

Dear:

This is in response to your letter dated August 1, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

In your letter you have stated the following:

I am in receipt of your letter dated June 17, 2002. In response to that letter, I am advising you that I am not paying the tax amount of \$1,004 for the tax year ended 1994 because the amount is an overpayment from the 1993 tax return and was applied to the 1994 tax return. I have included with this letter copies of the returns that were filed showing the \$1,004 being applied to the 1994 return from the 1993 return.

In addition, I have enclosed documentation from 2001 through January 2002 trying to get this issue resolved. As of this date, the Department has not acknowledged any of the information. In addition, I have received no information explaining why the Department believes this amount is still outstanding.

According to 86 Ill. Adm. Code 100.9400(b) (copy attached), any overpayment shall be "credited against his estimated tax liability for the succeeding taxable year." The facts are the 1993 return was filed showing the overpayment to be credited against my estimated tax liability for the next succeeding taxable year – 1994. Since this is a credit against the estimated tax liability for the next succeeding taxable year, it is not a request for refund and therefore be impacted by the statute of limitations. Accordingly, the Department's position that this overpayment has been forfeited is in error. At a minimum, the funds should have been refunded. The Department's position is wrong and is unfair to the taxpayer. The taxpayer should not have to pay the tax liability twice when in fact the returns show an overpayment and therefore the payment of the tax liability for the succeeding taxable year.

I would like to resolve this issue. At no time has the Department indicated its position on the issues I have raised.

The copy of the 1993 return you attached to your letter indicates that it was signed by you on January 18, 1999. The copy of the 1994 return you attached indicates that it was signed by you on May 10, 2000. There is no indication in your correspondence or our records that you filed either of these returns at earlier dates, or that you had received an extension of time to file these returns until the dates of signature.

**Response**

Section 911(a) of the Illinois Income Tax Act (35 ILCS 5/911) provides:

Except as otherwise provided in this Act:

- (1) A claim for refund shall be filed not later than 3 years after the date the return was filed (in the case of returns required under Article 7 of this Act respecting any amounts withheld as tax, not later than 3 years after the 15th day of the 4th month following the close of the calendar year in which such withholding was made), or one year after the date the tax was paid, whichever is the later; and
- (2) No credit or refund shall be allowed or made with respect to the year for which the claim was filed unless such claim is filed within such period.

In addition, Section 911(d)(1) provides:

If the claim was filed by the claimant during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.

Under these provisions, your claim for a credit for estimated taxes paid in 1993 was not timely, and no credit can be allowed. You did not file your return until 1999, more than 5 years after the estimated payments reported on the return were made. Accordingly, your request to credit the \$1,004 overpayment shown on your 1993 return against your estimated tax liability for 1994 cannot be allowed. Your 1994 return therefore understated your unpaid liability for that year by \$1,004. That amount remains due.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton  
Deputy General Counsel -- Income Tax